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PAGE 1 / 4

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ELECTRONICALLY FILED

Committee ID: C90015413  
RE: 48-Hour Report, File 8/26/2015

Dear Mr. Matheson,

I am writing as counsel to Democratic Socialists of America (DSA) in response to the Commission's September 29, 2015, request for additional information related to the above referenced 48-Hour Report. Thank you for taking the time to speak with me and DSA National Director Maria Svart about this request and, more generally, the ways in which DSA should report its independent expenditures in support of Democratic presidential candidate Bernie Sanders. The letter explains how DSA will amend previous filings reporting these expenditures and how, as advised by you, DSA will report its expenditures going forward.

As a preliminary matter, let me note just how poorly the Commission's regulations and reporting systems are equipped to cope with independent, grassroots efforts such as that now being undertaken by DSA. DSA and its members have been energized by Senator Sanders' candidacy. The issues Senator Sanders raises reflect the concerns of the organization and its members. The solutions he proposes echo those the organization has supported for decades. But just as importantly, the candidacy of a self-described democratic socialist promotes the larger cause of democratic socialism, a vision of an economy and society that is run democratically to meet human needs, not to make profits for a few.

It was inevitable, therefore, that DSA and its members would seek to support a Sanders presidential campaign, but the organization was committed to doing so in a transparent way that fully complied with federal campaign finance laws. It would hardly do if an organization that criticizes the undue influence wielded upon our society by wealthy corporations and the ultra-rich were to exploit campaign finance loopholes and flout reporting obligations in the way that so many monied interests have in recent years.

Yet, DSA's relatively small, grassroots efforts do not lend themselves to the reporting systems the Commission has created. DSA is using a portion of its members' dues, contributions, and other general treasury funds to support the largely grassroots efforts of its members and activists. Activists in one DSA chapter might be reimbursed by DSA for the costs of holding a pro-Sanders event. An activist in another chapter might be reimbursed for printing DSA pro-Sanders bumper stickers. The national DSA office might run off thousands of copies of a pro-Sanders flier and mail them out in small batches to chapters and members across the country. A paid DSA staff might post a blog post supporting Sanders and explaining the ideals of democratic socialism.

These types of activities create reporting headaches for an organization like DSA. Among those problems:

-Most of DSA's efforts for Sanders are national in nature, not specifically targeted to a particular state's primary or caucus. The goal is to amplify the national conversation about Sanders and democratic socialism. Yet the current Commission reporting system treats each primary and caucus as a separate election and requires that independent

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PAGE 2 / 4

expenditures be assigned to each, apportioning the costs among all upcoming contests (see, Advisory Opinion 2011-28 (2011)). As onerous as that approach is for a national advertising buy, it becomes truly absurd for a \$40 box of copy paper. (DSA applauds the concept underlying the Notice of Proposed Rulemaking on this issue that the Commission briefly discussed at its October 29 meeting and then held over, and we look forward to seeing the final document when it is published for comment.)

-For many DSA independent expenditures, the most (or only) significant direct cost is the staff time involved, such as time spent writing an online posting in support of Sanders, helping volunteers plan a pro-Sanders event, or designing a new Sanders flier. Small portions of work supporting various pro-Sanders efforts are scattered amidst the non-political work done for the organization and only documented on timesheets submitted as party of DSA's twice-monthly payroll system. It is impractical to track this time in sufficient detail to tie it to various specific expenditures and distribution dates.

-A grassroots effort with volunteer activists making small independent expenditures all over the country and then being reimbursed from the national organization's general treasury funds is difficult to accurately report on the Form 5 used by non-committees like DSA making independent expenditures. Were DSA a committee, its report would show the entire transaction - the original purchase as an in-kind contribution from the activist and the reimbursement from DSA to the activist - using the memo entry system available on the Form 3-X but not on the Form 5. While it is a valid question whether the country needs to see such detailed reporting when DSA pays for snacks for a pro-Sanders house party, it is not even possible to do so on the Form 5.

These are just some of the ways in which the current reporting systems, created for reporting massive ad buys by well-funded political operatives burden smaller, grassroots organizations. The result is inevitable, inadvertent errors in reporting; overly granular reports that hide the larger reality in mind-numbing numbers of pages of reporting; and time and money spent on compliance that rivals the small amounts actually spent on attempting to influence the election.

With all of that said, both DSA and I, personally, are grateful to you and your colleagues at the Commission for considering DSA's reporting problems, hearing our suggested solutions for how DSA could report its activities within the existing law and guidance, and authorizing DSA to proceed as agreed. Following is our understanding of what you and your colleagues have said would be acceptable reporting for DSA:

-Although DSA conceives of its pro-Sanders work in a national context, DSA will assign each of its independent expenditures to a particular state. Where the state is clear from the nature of the expenditure (e.g., expenditures related to an event held in a particular state), DSA will assign those expenditures to that state in its reporting. Where the expense is of a more general nature (e.g., staff time spent writing an online pro-Sanders communication), DSA's filing will reflect the reality that the organization's immediate goal is to influence the most imminent primaries and caucuses, based on the reality that if Sanders fails to do well in the upcoming state primaries, he stands little chance of continuing his campaign into the later ones. Therefore, DSA will assign such "general" independent expenditures to the next primaries and caucuses to come. For example, such an expenditure today would be split equally among Iowa, New Hampshire, Nevada, and South Carolina. An expenditure after those contests would be split among the Super Tuesday states, and so on.

-Triggers for 48- and 24-hour reporting will be based on the allocations described above. DSA will file a 48-hour report

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**A-G7 9 @5 B9CI G'H9LH'fl 97 : cfa ' - - L**

PAGE 3 / 4

by 11:59 pm the second day after its independent expenditures allocated to any state previously unreported on a 48-hour report exceed \$10,000, and it will file a 24-hour report by 11:59 pm on the day after such previously unreported independent expenditures exceed \$1000 in any state in which the election is to be held within 20 days.

-Under the allocation system described, it is likely that DSA will approach these \$10,000 and \$1000 filing thresholds nearly, but not quite, simultaneously in multiple states (e.g., Iowa and New Hampshire). Therefore, whenever DSA is obliged to file a 48- or 24-hour report it will report not just the previously unreported independent expenditures in only the triggering state, but rather DSA will report all previously unreported independent expenditures in any state, enabling DSA after each such report to begin counting from zero toward \$10,000 or \$1000 in each of the states.

-For independent expenditures that are reimbursements paid to staff or activists, DSA will collapse the payment to avoid double counting in light of the lack of Form 3-X-style memo entries on the Form 5. Each such reported expenditure will show as a payment from DSA to vendor from which the staffer or activist made the original purchase, and DSA will attempt (subject to space limitations on the form) to note in the description of the expenditure that the expenditure was a reimbursement.

-For compensation paid to staff for their work on communications and activities that constitute express advocacy for or against a federal candidate (thus making the staff compensation a reportable independent expenditure), DSA will report the independent expenditure as the amount paid to each such staffer for such work, and DSA will report that expenditure as having been made on the date the staffer receives the compensation under DSA's twice-monthly payroll system.

-Similarly, for independent expenditures that are portions of larger payments made to vendors that DSA pays on a regular basis, DSA will report the portion of such payments that constitute independent expenditures for each such bill. For example, DSA pays a vendor for office supplies including paper that DSA used to produce pro-Sanders materials that it distributes to various chapters and activists around the country. DSA will track the portion of these supplies used for such independent expenditures and report that portion, listing the date of the expenditure as the date of the invoice from the vendor. DSA plans to use this approach for office supplies, postage, copier charges, and other such expenses.

-DSA has, and will continue to use, general treasury funds to print pro-Sanders t-shirts and similar merchandise, which DSA then sells, typically at slightly above cost. DSA will report the cost of producing such materials as independent expenditures, but it will not report the amounts received from purchasers as reportable contributions, as DSA puts the funds received into its general treasury funds, where they may be used for any purpose, including non-political purposes.

-DSA will amend the reports previously filed for the 2nd and 3rd quarters of 2015 to ensure that all independent expenditures are allocated to a state. For some independent expenditures reported on the 3rd quarter report, DSA had already divided the expenditures among all the states. For those expenditures not previously assigned to a particular state, DSA will allocate the expenditures as described above - either to a single state where the expenditure is clearly for that state, or allocating the expenditure among the upcoming contests (Iowa, New Hampshire, Nevada, and South Carolina) where the expenditure is of a more general nature. However, DSA will not amend those 3rd quarter report entries already split among the 50 states, even though DSA will not be taking that approach going forward.

-In amending the previously filed 2nd and 3rd quarter reports,

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**A-G7 9 @5 B9CI G'H9LH'fl 97 : cfa ' - - L**

PAGE 4 / 4

DSA will not amend the way it previously reported expenditures made by staff and activists that were subsequently reimbursed by DSA, even though DSA will take a different approach to reporting such independent expenditures in subsequent reports. In those previously filed reports, such an expenditure was reported as a payment to the vendor(s) from which the staffer or activist purchased the good or service, an in-kind contribution to DSA from the staffer or activist in the amount of that purchase, and as another payment from DSA to the staffer or activist for the reimbursement. The result is that each such transaction gives the mistaken impression that DSA made twice the actual amount of independent expenditures (although arguably the technique presents a more detailed picture of the transaction). To avoid this mistaken impression, as described above, such transactions will subsequently be reported as a single payment from DSA to the vendor. However, DSA will not amend these entries on previous reports because (i) a careful reviewer of the originally filed documents can still get a complete and accurate picture of DSA's independent expenditures and (ii) because the FEC filing software (FEC File) would require DSA to amend the entries for these expenditures on DSA's previously filed 48-hour report before it would be possible to amend the entries on the quarterly reports.

-DSA will not amend the 48-hour report the organization filed on August 26, despite the fact that the expenditures on that report were not allocated to particular states and the expenditures made by staff or activists reimbursed by DSA were reported under a different system than DSA will use going forward. You have instructed us that because all of the expenditures on that 48-hour report will be reported and allocated among the states on DSA's amended quarterly reports, it is not necessary to amend the 48-hour report.

-For purposes of future 48- and 24-hour reporting thresholds, DSA will only count those independent expenditures made after those reported on the 48-hour report filed on August 26.

I believe that this accurately reflects the approach you have said is permissible. Please let us know as soon as possible if the methods of reporting described above do not reflect what you, in consultation with your colleagues, have said would be acceptable for DSA.

Thank you again for your assistance in helping us grapple with these difficult issues. If you have any further questions regarding this matter, please feel free to contact me at 202-328-3500.

Very truly yours,  
/s/ John Pomeranz  
Counsel to Democratic Socialists of America

cc: Maria Svart, National Director, Democratic Socialists of America

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